

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Avon Products, Inc. :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9-A of the Tax Law :
for the Years 1971 & 1972

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 1st day of May, 1981, he served the within notice of Decision by certified mail upon Avon Products, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Avon Products, Inc.
9 West 57th St.
New York, NY 10019

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
1st day of May, 1981.

James A. Berglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Avon Products, Inc. :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9-A of the Tax Law :
for the Years 1971 & 1972 :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 1st day of May, 1981, he served the within notice of Decision by certified mail upon Edward H. Hein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Edward H. Hein
Breed, Abbott & Morgan
One Chase Manhattan Plz.
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
1st day of May, 1981.

Annie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 1, 1981

Avon Products, Inc.
9 West 57th St.
New York, NY 10019

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Edward H. Hein
Breed, Abbott & Morgan
One Chase Manhattan Plz.
New York, NY 10005
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
AVON PRODUCTS, INC. : DECISION
for Redetermination of a Deficiency or for :
Refund of Corporation Franchise Tax under :
Article 9-A of the Tax Law for the Years 1971 :
and 1972. :

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1979 at 9:15 A.M. Petitioner appeared by Breed, Abbott & Morgan, Esqs. (Edward H. Hein, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

Whether or not income from bankers' acceptances constitutes income from investment capital.

1. Avon Products, Inc. ("Avon"), the petitioner in this proceeding, is a New York corporation with principal offices in the City of New York.

2. For the calendar years 1971 and 1972, Avon filed timely returns of the Franchise Tax imposed on Business Corporations under Article 9-A of the Tax Law (the "Franchise Tax").

3. During 1971 and 1972, Avon was engaged in the manufacture and sale of cosmetics, toiletries and beauty aids.

4. During 1971 and 1972, Avon purchased various securities and commercial investments in order to obtain a return from available cash not currently needed for business purposes. Included in its investment portfolio were a number of bankers' acceptances issued by foreign banks.

5. During 1971, Avon received \$236,999.00 of income from the bankers' acceptances held by it.

6. During 1972, Avon received \$158,981.00 of income from the bankers' acceptances held by it.

7. On its Franchise Tax returns for 1971 and 1972, Avon treated bankers' acceptances held by it as investment capital and reported the income specified in paragraphs 5 and 6 above as investment income.

8. Upon audit, the Corporation Tax Bureau of the New York State Department of Taxation and Finance determined that Avon's income from bankers' acceptances specified in paragraphs 5 and 6 above constituted income from business capital.

9. The reclassification by the Corporation Tax Bureau of income earned by Avon from bankers' acceptances from investment income to business income increases Avon's liability for the Franchise Tax by the following amounts:

	<u>Principal</u>	<u>Interest to January 4, 1977</u>		<u>Total</u>
1971	\$4,167.00	\$1,198.00	=	\$5,365.00
1972	3,260.00	927.06	=	<u>4,187.06</u>
	TOTAL			\$9,552.06

10. On January 4, 1977, Avon paid \$9,552.06 to the State of New York representing payment of the asserted additional franchise tax liability for

1971 and 1972 resulting from the reclassification of Avon's income from bankers' acceptances and interest.

11. Avon timely filed claims for refunds of the payments described in paragraph 10 above, and upon denial of such claims timely filed the petition for refund which is the subject of these proceedings.

12. Bankers' acceptances are essentially post-dated drafts which are certified by a bank. They are principally used to facilitate payment for goods and services in international commerce.

13. A secondary over-the-counter market for bankers' acceptances exists, maintained by dealers and market-makers such as Salomon Brothers, First Boston Corporation, Merrill, Lynch, Pierce, Fenner & Smith, Inc. and the Chase Manhattan Bank, N.A.

14. Bankers' acceptances of the type commonly traded by dealers and market-makers maintaining the market therefor are used as a means of investment and were so used by Avon.

15. Avon's decision to invest in bankers' acceptances as opposed to Treasury Bills or other items was based upon the relative interest rates of the various instruments.

16. Avon's decision to invest in one bankers' acceptance as opposed to another was based upon relative maturity dates and the credit worthiness of the issuing bank.

17. During 1971 and 1972, Avon was not a dealer in bankers' acceptances.

18. None of the bankers' acceptances held by Avon during 1971 and 1972 were held by Avon for sale to Avon's customers in the regular course of its business.

19. Bankers' acceptances held by Avon during 1971 and 1972 were not acquired in payment for goods or services rendered by Avon.

CONCLUSIONS OF LAW

A. That the term "investment income" means income from investment capital (section 208.6 of the Tax Law).

B. That the term "investment capital" is defined in section 208.5 of the Tax Law as follows:

"The term 'investment capital' means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular course of business..."

C. That in section 3.31(c) of the regulations in effect during the years at issue (Ruling of State Tax Commission with Respect to the Franchise Tax on Business Corporations, March 14, 1962), it was provided that the term "other securities" does not include corporate obligations not commonly known as securities, such as real property or chattel mortgages, contracts of sale, purchase money obligations, short-term notes, bills of lading, bills of exchange and other commercial instruments. Bankers' acceptances being drafts, clearly are excluded from the category "other securities", since the word "draft" is the common term for a bill of exchange. (Black's Law Dictionary, Fourth Revised Edition; Matter of the Petition of Feldman Wood Products Co., Inc., State Tax Commission, August 8, 1980, aff'd Sup. Ct. Albany County, Sp. Term, February 10, 1981.) Bankers' acceptances are created as "commercial instruments", and not as vehicles for capital formation by corporations or governments. The fact that a secondary investment market exists for trading them does not alter their essential character as commercial instruments.

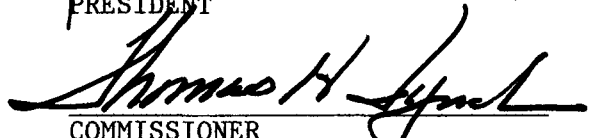
D. The petition of Avon Products, Inc. is denied.

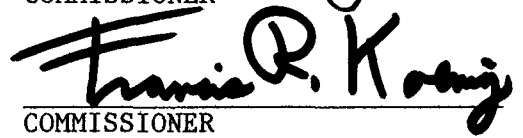
DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER